

Chapter 13

DISPUTE RESOLUTION

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Chapter 13

Dispute Resolution

On occasion, conflicts arise between school districts and parents/adult students. Several mechanisms are available through the State Department of Education (SDE) to assist in resolving disputes. The processes are individualized education program (IEP) facilitation, mediation, formal complaint, due process hearings, and expedited due process hearings. This chapter contains information on each of these processes.

Contact Information

The SDE accepts formal complaints and requests for IEP facilitation, mediation and hearings via fax, mail, and personal delivery. Additionally, requests for IEP facilitation and mediation may also be made by telephone. The SDE does not accept requests for any type of dispute resolution identified in this chapter via email because a parent signature is required. Formal complaints and requests should be directed to:

Dispute Resolution Coordinator
State Department of Education
Division of Student Achievement and School Accountability
Special Education
P.O. Box 83720
Boise, ID 83720-0027
208/332-6912
800/432-4601
TT: 800/377-3529
Fax: 208/334-4664

For further assistance in matters relating to dispute resolution, you may contact:

Comprehensive Advocacy, Inc. (Co-Ad)
4477 Emerald Street, Suite B-100
Boise, ID 83706
V/TT: 208/336-5353
V/TT: 866/262-3462

Idaho Parents Unlimited, Inc. (IPUL)
4696 Overland Road, Suite 478
Boise, ID 83705
800/242-IPUL
V/TT: 208/342-5884

Comparing Dispute Resolution Systems

IEP Facilitation	Mediation	Complaint	Impartial Due Process Hearing
Oral and written requests accepted	Oral and written requests accepted	Only written requests with signature accepted (e-mail requests not acceptable)	Only written requests with signature accepted (e-mail requests not acceptable)
Non-adversarial	Non-adversarial	Adversarial	Adversarial
Informal	Informal	Formal	Formal
Confidential	Confidential	Confidential	Confidential
No cost to parties	No cost to parties	Could be costly	Costly for schools/parents
Supports mutual problem-solving	Supports mutual problem-solving	SDE investigator makes final determination	Hearing officer orders solution
May take more than one IEP meeting	Takes less than a day Efforts made to complete entire process within 21 days	May take several weeks Investigation shall be completed within 60 days with a final written report	May take several days Decision shall be issued within 45 days of the request unless the timeline is extended by the hearing officer
Includes a legally constituted IEP Team	Up to three people on either side	As determined by the investigator	No limits on participants
Supports open, direct communication	Supports open, direct communication	Communication with investigator	Communication through attorneys and hearing officer
Agreements made by IEP Team	Agreements made jointly	Any corrective actions determined by SDE	Law-based solution
If unsuccessful, either party may pursue other alternatives	If unsuccessful, either party may pursue other alternatives	Currently no formal appeal	Decision is binding, but may be appealed to state or federal court

Section 1. IEP Facilitation

A request for IEP facilitation may be made by the parent and/or adult student or by a district representative, such as a director of special education. Requests may be made in writing or by phone to the SDE Dispute Resolution Coordinator as directed in the Introduction to this chapter.

A. Definition

IEP facilitation is a voluntary process during which an SDE-contracted individual is appointed to facilitate an IEP team meeting. The role of the facilitator is to help team members communicate more effectively and efficiently. IEP facilitation supports early dispute resolution, providing assistance to the IEP team before a potential conflict develops into a more serious dispute. The facilitator is an impartial third party, not a member of the IEP team, and has no stake in decisions made by the team. All IEP facilitators have received specialized training provided by the SDE. Facilitators are selected on a rotational and/or geographical basis.

The SDE provides IEP facilitation at no charge to the district or the parent and/or adult student.

B. IEP Facilitation Requests

A request for IEP facilitation may be made by either a parent and/or adult student or a designated district representative, such as a special education director, who has the authority to allocate resources and has knowledge of special education. A request for IEP facilitation:

1. may concern an initial, annual, or amended IEP that may be considered too difficult to manage; and
2. should be made at least two weeks prior to the scheduled IEP meeting.

The SDE will consider IEP facilitation requests on a case-by-case basis. As part of this consideration, the SDE Dispute Resolution Coordinator will contact the other party to determine whether that party is willing to participate; both parties shall agree to IEP facilitation for the process to go forward.

Section 2. Mediation

The SDE has developed a mediation system to help resolve disagreements between districts and parents/adult students regarding the identification, evaluation, educational placement, and the provision of a free appropriate public education (FAPE). A request for mediation may be made by either the parent and/or adult student or the district at any point without the necessity to request a due process hearing. Requests may be made in writing or by phone to the SDE Dispute Resolution Coordinator as directed in the introduction to this chapter.

The ultimate goal of mediation is to obtain a written agreement that is acceptable to both parties. Even if a written agreement is not achieved, mediation may be helpful in clarifying issues.

A. Definition of Mediation

Mediation is a structured, voluntary, informal process in which an impartial third party (a mediator) assists parents/adult students and district personnel resolve disputes. Mediation builds positive working relationships, encourages mutual understanding, and helps the parties focus on their common interest—the student. The district will not use the term “mediation” to refer to any district-level process for resolving disputes.

The Special Education Mediation Process Is:

Voluntary for parents and school personnel;

Offered when disputes arise, including, but not limited to, formal complaints and due process hearing requests;

Confidential, thus encouraging all participants to speak freely;

A **No-Cost Service** to parents and schools provided by the Idaho State Department of Education (SDE); and

An **Alternative** that does not delay the status of a due process hearing or formal complaint.

B. Mediation Policies

1. No video or audio recording of the mediation proceedings will be made.
2. Each party is limited to no more than three participants and shall designate a person who has the authority to make final resolution decisions.
3. The district shall have at least one representative present who has the authority to commit resources.
4. Because mediation is a non adversarial process that offers the parties the opportunity to communicate directly with each other, legal representation during a mediation session is strongly discouraged.
5. Except for the signed agreement, confidentiality pledge, and mediator evaluation forms, all notes or records taken during the proceedings will be collected and destroyed by the mediator at the conclusion of the mediation session.
7. The mediator will provide signed copies of the agreement to each party and the SDE.

8. The mediator will be excluded from subsequent actions—complaint investigations, due process hearings, and legal proceedings.
9. A due process hearing requested prior to mediation may be canceled by the requesting party.
10. If for any reason the mediation fails, the mediator will provide each party and the SDE with a statement certifying that the mediation was unsuccessful.
11. Either party has the option to make another request for mediation.

C. Mediation System

Mediation offered by the SDE is voluntary, confidential, and at no cost to the parent and/or adult student or district.

1. Both the district and the parent and/or adult student may request mediation at any time.
2. The SDE has the discretion to suggest mediation to either party at any time it deems appropriate, but is required to make mediation available to the parties after a formal complaint or a request for a due process hearing has been filed.

Following a request for mediation, the SDE will contact the other party and ask whether they are willing to participate in mediation. Mediation may not be used to deny or delay the right to a due process hearing or any other rights afforded to students and parents.

D. SDE Contracted Mediators

Idaho SDE **contracted** mediators are impartial and trained in effective mediation, communication, negotiation, and problem-solving skills, and in laws and regulations relating to the provision of special education and related services. A mediator assists the parent and/or adult student and the district in resolving disputes. The SDE will select the mediator on a random, rotational, or other impartial basis from a list of highly qualified mediators. At times, the SDE may appoint two individuals to serve as co-mediators.

1. In all cases a mediator shall not:
 - a. be an employee of the SDE or district involved in the dispute;
 - b. have children enrolled in the district involved in the dispute; or
 - c. have a personal or professional interest that conflicts with the person's objectivity.
2. Additionally, if the parties have agreed to mediation following a due process hearing requested:

- a. co-mediators may not be used; and
 - b. the mediator may not be an employee of any district or state agency providing services that are publicly funded under the IDEA 2004, Part B.
3. The mediator:
- a. Contacts the parties to explain the mediation process, identify issues, and help the parties establish a date, time, and place to hold the mediation.
 - b. Establishes the ground rules for all parties to follow.
 - c. Guides the process.
 - d. Encourages open and honest communication.
 - e. Ensures that each party is heard.
 - f. Rephrases information and summarizes issues.
 - g. Facilitates the writing of the agreement.

E. Mediation Timelines

The SDE will appoint a mediator within 3 business days of a request for mediation. The mediation will be held in a location convenient to the parties involved, and every effort will be made to complete the process within 21 calendar days.

F. Confidentiality

Discussions that occur during the SDE mediation process are confidential and cannot be used as evidence in any subsequent due process hearing or civil proceeding. The parties in the SDE mediation process will be required to sign a confidentiality pledge before mediation begins.

G. Mediation Agreement

An agreement reached by the parties through SDE mediation shall be set forth in writing and is enforceable in state and federal courts.

Section 3. Formal Complaints

A formal complaint may be filed with the SDE by any individual or organization from Idaho or another state who believes the district or other education agency has violated a requirement of Part B of the IDEA 2004, including the alleged failure to comply with a due process hearing decision rendered. The SDE will accept a complaint received by mail, fax or hand delivery. A

complaint filed by email will not be accepted. Contact information is listed in the introductory paragraph to this chapter.

See the document section at the end of this chapter for “Procedures for Resolving Complaints.”

A. Filing Complaints

A formal complaint can be made by any person or organization. The complaint shall be in writing and include the following information:

1. current date;
2. the name, address, and telephone number of the person making the complaint (or available contact information);
3. the signature of the person making the complaint;
4. if alleging violations regarding a specific student, the name and address of the student involved (or available contact information in the case of a homelessness student or family);
5. the school and district or other education agency that is the subject of the complaint;
6. one or more statements (allegations) that the district has violated one or more requirements of Part B of the IDEA 2004;
7. the facts and/or a description of the events that support each allegation; and
8. proposed resolution of the problem or the relief sought.

The complaint shall allege a violation that occurred not more than one year prior to the date that the complaint is received. The SDE has a form available that may be used.

B. SDE Complaint Procedures

Upon receipt of a written complaint, the SDE will do the following:

1. Determine whether the complaint meets all of the required criteria. The SDE will notify the complainant if his or her submission is sufficient as listed in Section A, above.
2. Notify the district that a complaint has been received and offer both parties SDE mediation. Parents shall receive a copy of the Procedural Rights statement.
3. Set aside all or any part of the written complaint that is being addressed in a due process hearing until the conclusion of the hearing. Any issue that is not a part of the due process action will be resolved using the SDE complaint procedures and timelines. If a

hearing officer's decisions are not adequately addressed by the district, the SDE will investigate.

4. Give the complainant the opportunity to provide additional information about the allegations, either orally or in writing.
5. Resolve the complaint and issue a Final Report that includes the findings of fact, conclusions, and resolution for each allegation within 60 calendar days of receipt of the complaint. This time period may be extended, but only under exceptional circumstances, which shall be documented by the SDE. The resolution will state:
 - a. how to remedy any denial of services, which may include the award of compensatory services, monetary reimbursement or other corrective action as appropriate to the needs of the student; and
 - b. the future provision of services for a student with a disability, if such clarification is needed.
6. Ensure the district takes corrective action if it is determined that the district was out of compliance.

C. Methods of Resolving Complaints

The SDE will make every effort to resolve complaints in the least adversarial manner possible. Mediation will be offered to the disputing parties. If mediation is not accepted by the parties or fails to resolve the allegation(s), then resolution of a formal complaint may be achieved through one or more of the following four processes:

1. **Verification of resolution:** Upon receipt of the initial complaint from the SDE outlining the allegations, the district may submit information to the SDE to document that one or more of the allegations of the complaint have been resolved. The SDE may also receive similar information from other sources.
2. **Corrective action plan (CAP):** The district may propose a CAP to address the allegations in the complaint. The SDE may accept, reject, or negotiate the proposed CAP or require other corrective actions or timelines to ensure the district will achieve compliance for each allegation stated in the complaint. If this process is not successful, the SDE will conduct a full investigation.
3. **Early complaint resolution (ECR):** The SDE may propose the use of ECR to resolve the complaint. This approach, which shall be mutually agreed upon, provides the complainant and the district an opportunity to immediately resolve the issues prompting the complaint, even though the parties may not agree on particular allegations. The SDE Dispute Resolution Coordinator or an SDE-contracted complaint investigator will facilitate a resolution through the development of a written agreement to be signed by both parties. If this process is not successful the SDE will conduct a full investigation.

4. **Full investigation:** If necessary, the SDE will investigate the complaint by conducting interviews and reviewing files, correspondence, and other information. An on-site investigation may occur if necessary. The SDE will write a Final Report, including Findings of Fact, Conclusions, and identify appropriate Corrective Actions, if required.

Section 4. Due Process Hearings

A request for a due process hearing may be made by either a parent and/or adult student or the district.

A parent and/or adult student or district may file a request for hearing with the other party. The request shall be mailed, faxed, or hand delivered. When the request is filed with the district, the parent and/or adult student shall send copies to the Dispute Resolution Coordinator at the SDE.

All applicable timelines for due process hearing and resolution sessions will start when the request has been filed with the other party and the SDE.

A. Definition

Idaho's due process system has two types of hearings, a regular due process hearing and an expedited due process hearing:

1. A regular due process hearing is an administrative hearing to resolve disputes on any matter related to the identification, evaluation, educational placement, and the provision of FAPE.
2. An expedited due process hearing is as an administrative hearing to resolve disputes concerning discipline occurring within 20 school days of the request, with a decision rendered within 10 school days of the hearing.

B. Due Process Hearing Request from Parent and/or adult Student

A due process hearing may be requested on behalf of a student by a parent, adult student or by an attorney representing the student.

1. A due process hearing shall be initiated within two years of the date the parent and/or adult student knew or should have known of the dispute. The two-year timeline will not apply if the parent and/or adult student was prevented from requesting a hearing due to misrepresentations or the withholding of information by the district.
2. A due process hearing can be initiated regarding issues pertaining to identification, evaluation, educational placement, or the provision of FAPE if:
 - a. the district proposes to initiate or change any of these matters; or

- b. the district refuses the parent's and/or adult student's request to initiate or change any of these matters.

See the Documents Section of this chapter for a *Due Process Hearing Request* form. The parent and/or adult student, or his or her attorney filing a due process hearing request shall forward a copy to the SDE and the district. The SDE will provide reasonable accommodations to individuals who need assistance in filing a written request.

C. Due Process Hearing Request by a District

A district may initiate a due process hearing within two years of the dispute in an attempt to accomplish one or more of the following:

1. override a parent's/adult student's refusal of consent for an initial evaluation or the release of information;
2. override a parent's/adult student's written objection to an IEP change, an educational placement change, or disciplinary actions when there is an imminent threat to safety;
3. ask a hearing officer to place a student in an interim alternate education setting (IAES) when there is substantial evidence that maintaining the current educational placement is likely to result in injury to the student or others; or
4. request that a hearing officer determine whether an evaluation conducted by the district was appropriate or whether an evaluation obtained by a parent and/or adult student meets the criteria for a publicly funded independent educational evaluation (IEE).

If the district initiates a hearing, the district will inform the parent and/or adult student and the SDE.

D. Contents of a Request for a Due Process Hearing

A request for a due process hearing shall be made in writing and shall include the following information:

1. the current date;—
2. the student's name, address (or available contact information in the case of a homeless student), and school district;
3. the signature of the individual make the request for a due process hearing;
4. a description of the nature of the problem, including supporting facts; and
5. a proposed resolution of the problem or the relief sought.

E. Actions for Due Process Hearings**1. A Due Process Request Is Filed**

- a. A request may be filed by either party.
- b. Either party may challenge the sufficiency of the due process hearing request within 15 days of the receipt of the hearing request. The hearing officer shall render a decision regarding the sufficiency within five calendar days and immediately notify the parties of the decision in writing.
- c. The district superintendent has the responsibility for informing the district's board of trustees of any request for a hearing.
- d. The district shall inform a parent and/or adult student of any free or low-cost legal or other relevant services available to him or her and provide a copy of the Procedural Safeguards if a due process hearing is requested or if the parent and/or adult student requests such information.

2. A Hearing Officer Is Assigned

- a. Within 10 calendar days of a request for a hearing, an impartial hearing officer will be assigned by the SDE. The SDE maintains a list of trained hearing officers, along with their qualifications, and assignments are made on a rotational basis.
- b. A hearing officer may not be an employee of the district or the SDE, an individual having any personal or professional interest that would conflict with his or her objectivity in the hearing, or a member of the board of trustees of the district.
- c. The district will pay for all actual expenses incurred by the hearing officer and for the cost of a verbatim transcript of the hearing. The hearing officer will be compensated at rates set by the SDE.

3. SDE Mediation Is Offered

The SDE is required to offer mediation as an alternative dispute resolution mechanism to the involved parties.

3. Response to a Due Process Request

- a. The other party shall file a response with 10 calendar days addressing the issues raised.
- b. If the district has not sent a written notice to the parent and/or adult student regarding the subject matter contained in the due process request, the district will,

within 10 calendar days of receiving the request, send the parent and/or adult student a response that includes all the components of written notice.

- c. Either party may amend the request, upon obtaining written consent from the other party or as granted by the hearing officer, at least 5 calendar days prior to the hearing. If the request is amended, timelines for resolution and resolving the issues begin again as of the date of the amended request.

5. Pre-hearing Resolution Session

- a. A resolution session will be held within 15 calendar days of a request for a due process hearing unless: (the IDEA 2004 requires the resolution session only if the parent has requested the due process hearing. Some states, through state regulations, are expanding this also to hearing requests initiated by the district.)
 - (1) Both parties agree in writing to waive the resolution meeting.
 - (2) Both parties agree to go to mediation.
- b. A “resolution team” includes the parent and/or adult student, a representative of the district who has decision-making authority, and relevant members of the IEP team who have specific knowledge of the facts identified in the request for a due process hearing as determined by the parties. The district’s attorney will not attend the resolution session unless the parent and/or adult student will be accompanied by an attorney. Note: The SDE will offer the services of a facilitator with the approval of both parties.
- c. The purpose of the meeting is for the parent of the student to discuss the due process hearing request, and the facts that form the basis of the request, so that the district has the opportunity to resolve the dispute.
- d. If a resolution is reached regarding the issues raised in the request for a due process hearing, the district representative and parent and/or adult student will sign a legally binding document that is enforceable in state and federal court. Either party may void this agreement within 3 business days of signing the agreement.
- e. A due process hearing will be scheduled if no resolution is reached within 30 calendar days of receiving the request for a due process hearing.
- f. If the district is unable to obtain the participation of the parents after reasonable efforts have been made and documented, at the conclusion of the 30 calendar day period, the district may request that the hearing officer dismiss the parents due process hearing request.

- g. A parent may request an immediate due process hearing from the hearing officer if the district has not scheduled or participated in a resolution session within 15 days of the request.

The 45 day timeline for the due process hearing request starts the day after one of the following events:

- a. Both parties agree in writing to waive the resolution meeting;
- b. After either the mediation or resolution meeting starts but before the end of the 30 day period, the parties agree in writing that no agreement is possible;
- c. If both parties agree in writing to continue the mediation at the end of the 30 day resolution period, but later, the parent or public agency withdraws from the mediation process.

6. Hearing Preparation

- a. A parent and/or adult student will be allowed to inspect and review reports, files, and records pertaining to the student not less than 5 business days prior to a due process hearing. A district may charge a fee for copies of records if the fee does not effectively prevent a parent and/or adult student from exercising his or her right to inspect and review those records. The district may not charge a fee to search for or retrieve records.
- b. Not less than 5 business days prior to a due process hearing, each party will disclose to all other parties:
 - (1) Evaluations completed by that date; and
 - (2) Recommendations based on those evaluations intended to be used at the hearing.
 - (3) Copies of exhibits which will be introduced and a list of witnesses each party intends to call at the hearing.
- c. The hearing officer will provide notification as to the time and place of the due process hearing to the parent and/or adult student, district officials, and the SDE. The hearing shall be conducted at a time and place reasonably convenient to the parent and/or adult student.

7. The Due Process Hearing

- a. The hearing officer will preside over and conduct the proceedings in a fair and impartial manner, permitting all parties an opportunity to present their information

and opinions pursuant to the Idaho Administrative Procedure Act (IDAPA) and IDEA 2004 requirements.

- b. A parent and/or adult student and district personnel may be accompanied and advised by legal counsel and other persons with special knowledge or training about students with disabilities.
- c. A parent and/or adult student has the right to open the hearing to the public and to have the student who is the subject of the hearing present.
- d. Only a parent and/or adult student, a district, and their respective attorneys have the right to present evidence, to compel the attendance of witnesses and the production of documents, and to confront and cross examine witnesses.
- e. New issues (issues not in the original due process request) may not be raised at the hearing unless agreed to by the other party. Any party may, however, prohibit the introduction of any evidence at the hearing that was disclosed less than 5 business days before the hearing.
- f. During the hearing the district will provide reasonable accommodations as required by federal regulations. Disputes will be referred to the SDE for resolution.
- g. A record of the hearing will be made. The record will be a written verbatim transcript. The parent and/or adult student may choose an electronic verbatim record. The district will pay the transcript costs, and a copy of the transcript will remain with the SDE. The parent and/or adult student and district personnel have the right to obtain a copy of the record upon formal request.

8. Decision of the Hearing Officer

- a. The decision of the hearing officer will be based solely on presentations made at the due process hearing.
- b. The decision made by the hearing officer will be made on substantive grounds based on a determination of whether a student received FAPE.
 - (1) In matters alleging a procedural violation, a hearing officer may find that a student did not receive FAPE only if the procedural inadequacies:
 - (a) impeded the student's right to FAPE;
 - (b) significantly impeded a parent's/adult student's opportunity to participate in the decision-making process; or
 - (c) caused a deprivation of educational benefit.

- (2) A hearing officer may order a district to comply with procedural requirements, regardless of whether a district's failure in this area did or did not result in a denial of FAPE.
- c. The decision will include findings of fact and conclusions of law.
- d. The hearing officer's written decision shall be available within 45 calendar days from the date of the request for a hearing. The 45-calendar-day timeframe begins when the written request is actually received by the district or the SDE, whichever is earlier.
- e. The findings of fact and decision shall be sent to the parent and/or adult student at no cost. Copies will also be mailed to the district superintendent, the SDE, and representatives of the district.
- f. After deleting personally identifiable information, the SDE will transmit the decision to the Special Education Advisory Panel (SEAP) and make the decision available to the public upon request.
- g. A hearing officer's decision will be enforceable in state and federal court. It will be implemented not later than 14 calendar days from the date of issuance unless:
 - (1) the decision specifies a different implementation date; or
 - (2) either party appeals the decision by initiating civil action in state or federal district court.
- h. Nothing in the section can be interpreted to prevent a parent from filing a separate due process hearing request on an issue separate from the request already filed. The SDE may consolidate multiple hearing requests involving the same IEP.
- i. Stay Put
 - (1) During the pendency of any due process hearing, the student shall remain, or "stay put," in his or her current educational placement unless the district and parent and/or adult student agree otherwise.
 - (2) The stay-put placement continues during any subsequent appeals unless a hearing officer agrees with a parent and/or adult student that a change of placement is appropriate, in which case, the placement identified in the hearing officer's decision becomes the stay-put placement.
 - (3) If the dispute involves an application for initial admission to public school in Idaho, the student, with the written consent of his or her parent, shall be placed in the public school program until the proceedings are completed.

- (4) “Stay put” does not apply when a student is transitioning from Part C (the Infant Toddler program) to Part B services in Idaho. Following the development of an IEP or an individual family service plan (IFSP), if an educational placement dispute arises involving a student transitioning from Part C to Part B, the student cannot “stay put” in Part C:
 - (a) With written consent of the parent, the student shall be placed in the public school until completion of all the hearing proceedings.
 - (b) If the parent does not give written consent, the student will not receive services until completion of the hearing proceedings.
 - (c) If the student is eligible for special education and related services, and the parent consents, then the district shall provide those special education and related services which are not in dispute.

Section 5. Expedited Due Process Hearings

A request for an expedited due process hearing may be made by either a parent and/or adult student or the district. The request should be mailed, faxed or hand delivered to the Dispute Resolution Coordinator at the SDE. A request for an expedited due process hearing filed by email will not be accepted. Contact information is listed in the Introduction to this chapter.

A. Definition

An expedited due process hearing is defined as an administrative hearing to resolve disputes concerning discipline occurring within 20 school days of the request, with a decision rendered within 10 school days of the hearing.

B. Expedited Hearing Requests

1. A district may request an expedited hearing if the district believes maintaining the current placement or returning the student to the prior placement is substantially likely to result in injury to the student or others.
2. A parent and/or adult student may request an expedited hearing if:
 - a. he or she disagrees with a determination that the student’s behavior was not a manifestation of the disability; or
 - b. he or she disagrees with the district’s discipline decision, which resulted in a change of placement.

See Section 5D of this chapter for additional information regarding placement during a hearing.

C. The Expedited Hearing Process and Decisions

An expedited hearing will be conducted in a fair and impartial manner. Guidelines and proceedings will be the same as those in a regular due process hearing, except for the following changes:

1. The SDE will appoint a hearing officer within 2 business days of a request.
2. A resolution session shall occur within 7 days of receiving a due process hearing request unless the parties agree in writing to waive the resolution session or go to mediation.
3. A due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 day of the receipt of the expedited due process hearing request.
4. Any party may prohibit the introduction of any evidence at the hearing that was not disclosed at least 2 business days before the hearing.
5. The hearing shall occur within 20 school days of the request, with a decision rendered within 10 school days of the hearing. A written decision will be mailed to both parties.
6. A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other original due process hearings.

D. Placement During an Expedited Hearing

When a hearing has been requested by either the parent and/or adult student or the district regarding placement decisions, the student shall “stay put” during the pendency of the hearing. In relation to disciplinary proceedings, stay put means:

1. The student will remain in the IAES until the timeline for the disciplinary action expires or the hearing officer renders a decision, whichever occurs first.
2. Upon expiration of the IAES placement, the student will be placed in the setting he or she was in prior to the IAES. However, if district personnel maintain that it is dangerous for the student to return to that placement, the district may request an expedited hearing to continue the IAES for up to an additional 45 school days. This procedure may be repeated as necessary.

If the hearing officer finds for the parent and/or adult student, the change of placement cannot occur and the IEP team will need to determine the extent of services that are appropriate to meet the student’s individual needs and to address the student’s behavior. If the hearing officer finds for the district, the district may use the same disciplinary procedures, including expulsion, as it uses for any other student, except that FAPE shall be provided according to the requirements in Chapter 12, Section 3.

Section 6. Appeals and Civil Action

1. An appeal to state or federal court shall be filed within 42 calendar days from the date of issuance of the hearing officer's decision.
2. Either party shall exhaust all dispute resolution procedures available under the IDEA 2004 prior to filing action in civil court. However, nothing in the IDEA 2004 restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, or other Federal laws protecting the rights of children with disabilities. This means either party may have remedies available under these laws that overlap with IDEA 2004. To obtain relief under those other laws, either party shall first use the available dispute resolution procedures under the IDEA 2004 before going directly into court.

Section 7. Attorney Fees

A district court will have jurisdiction in the awarding, determination, or prohibition of attorney fees. The court may:

1. award reasonable attorney fees as part of the costs to the prevailing party; and
2. determine the amount of attorney fees, using prevailing rates in the community in which the action occurred, for the kind and quality of services provided. No bonus or multiplier may be used in calculating the amount of fees awarded.

Funds under Part B of the IDEA 2004 cannot be used by the district to pay any attorney fees or costs of a party related to an action or proceeding, such as deposition, expert witnesses, settlements, and other related costs. However, Part B funds may be used to pay hearing officer fees or the costs of a meeting room to conduct the hearing.

A. Prohibition of Attorney Fees

1. Attorney fees may not be awarded:
 - a. for legal representation at an IEP meeting, including a resolution session, unless such a meeting is convened as a result of a due process hearing or a judicial action; or
 - b. for mediation that is conducted prior to a request for a due process hearing.
2. Attorney fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent and/or adult student if:

- a. the district makes an offer at least 10 calendar days before a due process hearing or a civil proceeding begins;
- b. the offer is not accepted by the parent and/or adult student within 10 calendar days after it is made; and
- c. a court or due process hearing officer finds that the relief obtained by the parent and/or adult student is not more favorable to the parent and/or adult student than the offer of settlement.

B. Exception to the Prohibition of Attorney Fees

An award of attorney fees and related costs may be made to a parent and/or adult student who is a prevailing party and who was substantially justified in rejecting the district's settlement offer.

C. Reduction in the Amount of Attorney Fees

A court may reduce an award for attorney fees under any of the following circumstances:

1. During the course of the action or proceeding, the parent and/or adult student or his or her attorney unreasonably extended the final resolution.
2. The amount of the award unreasonably exceeds the prevailing rate in the community for similar services by attorneys of reasonably comparable skills, reputation, and experience.
3. The time spent and legal services rendered were excessive considering the nature of the action.
4. The attorney representing the parent and/or adult student did not provide the information required in a due process hearing request.

D. Exception to the Reduction of Attorney Fees

The amount of attorney fees will not be reduced if the court finds that the district or SDE unreasonably extended the final resolution of the action or proceeding.

E. Special Provisions Regarding Attorney Fees

1. A district or SDE that prevails may seek attorney fees from a court against the parent's/adult student's attorney if the action is deemed frivolous, unreasonable, without foundation or prolongs the litigation.
2. A district or SDE that prevails may seek attorney fees from a court against the parent's/adult student's attorney or the parent and/or adult student if the hearing request

was presented for improper purposes such as to harass the district, cause unnecessary delay or needlessly increase the cost of litigation.

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SPECIAL EDUCATION MEDIATION IN IDAHO

MANAGING PARENT AND SCHOOL CONFLICT THROUGH EFFECTIVE COMMUNICATION

If conflict occurs between a parent and school personnel regarding the educational program of a special education student, mediation provides a non-adversarial alternative to resolve the dispute.

Mediation is a structured, yet informal, voluntary process in which an impartial third party, a mediator, helps parents and school personnel who are experiencing conflict to reach a suitable agreement. Mediation builds positive working relationships, encourages mutual understanding, and helps parents and school personnel focus on their common interest—the student.

Section 1. Mediation in Idaho

The mediation process:

1. May resolve disputes regarding the identification, evaluation, educational placement, or related services for students with disabilities;
2. Clarifies areas of agreement and disagreement; and
3. Fosters better relationships between parents and schools

Section 2. Requesting Mediation

An oral or a written request for mediation may be made to the SDE by the parent of a student with a disability, a legal guardian, a surrogate parent, or the district. In addition, the SDE will encourage parents and districts to participate in mediation when it seems appropriate. Following a request for mediation, the SDE will make every effort to complete the process within 21 days.

A request for mediation:

1. Is appropriate when parents and/or schools are unwilling or unable to modify their position without outside assistance;
2. May occur when parents and schools, after making a good-faith effort, face an impasse in attempting to resolve the conflict; and
3. Can be scheduled prior to, or concurrent with, a request for a due process hearing.

Section 3. Proposed Mediation by the SDE

The SDE will automatically offer mediation to resolve a dispute between parents and the district:

1. When there is a formal request for a due process hearing; and
2. At any other time the SDE deems the use of mediation appropriate.

Section 4. Appointment of a Mediator

The SDE maintains a list of qualified mediators. When both parties in a dispute agree to mediate, every attempt will be made by the SDE to appoint a mediator within 3 business days of the request. A mutually agreed upon time, date, and place of the mediation will be coordinated by the mediator.

If a due process hearing has been requested, the SDE will use a rotation list to select the mediator or both parties will be involved in and agree with the selection of the mediator.

If a due process hearing has been requested, the mediator may not be an employee of any district or state agency providing publicly funded services under the IDEA 2004 and co-mediators may not be used.

Section 5. The Mediator

A mediator is a neutral third party trained in communication, problem-solving and negotiation skills, and specific mediation techniques who acts as a facilitator to assist s and schools in resolving conflicts. The mediator:

1. Educates the parties about the mediation process.
2. Establishes the ground rules for all parties to follow.
3. Guides the process.
4. Encourages open and honest communication.
5. Ensures that each party is heard.
6. Rephrases information and summarizes issues.
7. Facilitates the writing of the agreement.

Section 6. Roles of Parents and Schools

It is in the best interest of all parties, including the student, to explore mediation as a means to an informal resolution of the conflict. Parents and school personnel play a very important role in mediation. As active participants, each party can help design a mutually agreeable solution.

Section 7. Prior to the Mediation

The SDE will provide:

1. Formal notification to the disputing parties of the mediator appointed.
2. A copy of *Special Education Mediation in Idaho* and the *Procedural Safeguards Notice* to each party.
3. A copy of the “Confidentiality Pledge” to the parent, district, and mediator. The parties should review the pledge, come to the mediation with any questions regarding confidentiality, and be prepared to sign the pledge.

The mediator will:

1. Contact the parties to explain the mediation process, identify issues, and help the parties establish a date, time, and place to hold the mediation.
2. Assist in determining who will attend the mediation session and inform the parties that participants need to be knowledgeable about the student and of available resources or services the student may need.
3. Advise the SDE of the names of all parties who will participate in the mediation session.

The parent and district will:

1. Determine who will attend the mediation session and advise the mediator of their choices.
2. Advise the mediator that the individual(s) with authority to commit resources and make final resolution decisions will participate in the mediation session.

Section 8. Preparing for the Mediation Session

The following guidelines can help participants prepare for the mediation session:

1. Keep your schedule free and be willing to give at least one full day to the mediation process.
2. Put aside personality conflicts and center on the educational interests of the student.
3. Approach mediation in good faith.

4. Be open, honest, and willing to listen.
5. Be familiar with all documents related to the dispute, including the Individualized Education Program (IEP).
6. Organize your information and materials.
7. Set goals you would like to achieve during the session.
8. Be open to alternatives.

Section 10. The Mediation Session

Every mediator has his or her own personal style of conducting a mediation. Participants should feel free to ask questions and seek clarification on any issue during the session. The mediation may include the following stages:

1. **Introduction:** The mediator will explain the process, set the ground rules for all parties, respond to questions, and encourage the parties from the onset to deal with issues – not personalities.
2. **Identification of issues:** Each party will have an opportunity, without interruption, to identify issues and share information. The mediator may seek additional information or summarize the issues.
3. **Expression of interests:** At this stage, the mediator helps the parties identify their interests (those factors underlying their issues). Goals, needs, beliefs, hopes, and fears are expressed, explored, and clarified.
4. **Caucus:** On occasion, issues and underlying interests may not be clear. Opportunity is provided for each party to “caucus” with the mediator for the purpose of sharing information or seeking clarification about the issues. The mediator will not disclose information from caucus sessions without consent.
5. **Recess:** A break may be requested by any participant during the session. This time provides an excellent opportunity for all parties to gather their thoughts and absorb what has transpired.
6. **Creating alternatives:** After the basic issues and interests have been identified, discussed, and clearly understood by all parties, the mediator will assist the parties in identifying or developing options to resolve the conflict. At any time during an open session or in a caucus, either party may propose solutions.

7. **Developing and writing a plan:** The ultimate goal of mediation is to obtain a written resolution to the conflict. The parties establish the terms of the agreement. The mediator writes the final agreement, which is signed by the parent(s), school representatives, and mediator. Each party retains a copy of the agreement. If an agreement involves proposed changes to a student's IEP, an IEP team meeting should be convened as soon as possible.
8. **Implementation:** For the final agreement to work effectively, its provisions shall be implemented. The signed agreement demonstrates a commitment by both parties to abide by the conditions of the agreement. Ultimately, it is the responsibility of the parties to fulfill their obligations.

For additional information, contact:

Dispute Resolution Coordinator

State Department of Education

Division of Student Achievement and School Accountability

P.O. Box 83720

Boise, Idaho 83720-0027

208/332-6912

800/432-4601

TT: 800/377-3529

FAX: 208/334-4664

Regional Special Education

North: 208/667-2588 Coeur d'Alene

208/885-9060 Moscow

Southeast: 208/282-3610 Pocatello

208/736-4263 Twin Falls

Southwest: 208/426-4315 Boise

208/426-4397 Boise

Comprehensive Advocacy, Inc. (Co-Ad)

4477 Emerald Street, Suite B-100

Boise, ID 83706

V/TT: 208/336-5353

V/TT: 866/262-3462

Idaho Parents Unlimited, Inc. (IPUL)

4696 Overland Road, Suite 478

Boise, ID 83705

800/242-IPUL

V/TT: 208/342-5884

IDAHO STATE DEPARTMENT OF EDUCATION
PROCEDURES FOR RESOLVING COMPLAINTS
UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT 2004

Section 1. Filing Complaints

A. Filing a Formal Complaint

Any individual or organization from Idaho or another state who believes a school district or other education agency has violated a requirement of Part B of the Individuals with Disabilities Education Improvement Act 2004 (IDEA 2004) may file a formal complaint with the State Department of Education (SDE). The complaint shall:

1. Be in writing. Electronic mail is not acceptable. (The SDE will provide reasonable accommodations to individuals who need assistance in filing written complaints.)
2. Be signed and dated.
3. Include one or more allegations. Allegations are statements that an education agency has violated a requirement of Part B of the IDEA 2004. The alleged violations may not be older than one year from the date the complaint is received by the SDE.
4. Include the supporting facts of each allegation. Supporting facts are a description of the events to support the allegation(s), including the name(s) of the student(s) involved, as appropriate.
5. Include a proposed resolution for the complaint.

B. Contact Information Required

Complainants should include their mailing addresses and work and home telephone numbers as well as the name, address, and telephone number of the student(s) involved.

C. Formal Complaints Address

Complaints shall be mailed to:

Dispute Resolution Coordinator
State Department of Education
Division of Student Achievement and School
Accountability
P.O. Box 83720
Boise, ID 83720-0027

Section 2. Evaluating Complaints

At times, the SDE may not be able to proceed with resolution of all of a complainant's concerns. Complaints will be evaluated to determine whether the SDE can proceed with resolution. The SDE will notify the complainant, within 30 days of receipt of a complaint, if it cannot proceed with complaint resolution and the reasons. The complainant has the option of filing a new complaint restarting the 60-day timeline or revising the complaint. If the revised complaint contains additional allegations on which the SDE can proceed, the SDE will modify the scope of complaint resolution and may extend the 60-day timeline.

A. Complaint resolution cannot proceed when:

1. The complaint is not in writing.
2. The complaint is not signed.
3. The complaint does not include allegations of Part B violations. (If appropriate, the SDE will notify the complainant of the appropriate agency, entity, or process to address his or her concerns.)
4. The complaint does not include the facts to support the allegations for any of the allegations.
5. All of the allegations in the complaint have been resolved in a previous due process hearing. However, the SDE will resolve a complaint alleging that the education agency failed to implement a due process hearing decision.

B. Resolution of every allegation cannot proceed when:

1. Some of the statements in the complaint are not allegations that an education agency has violated a requirement of Part B of the IDEA 2004. In this situation, the SDE will proceed with resolution of the statements that are allegations. Where appropriate, the SDE will assist the complainant in clarifying other statements and/or will inform the complainant of the appropriate agency, entity, or process to address concerns that do not allege violations of the IDEA 2004.
2. The facts to support some of the allegations are not provided. In this situation, the SDE will proceed with resolution of the allegations for which facts have been included. If appropriate, the SDE will assist the complainant in identifying the facts for his or her other allegations.
3. Some or all of the allegations in the complaint are the subject of a current due process hearing. In this situation, the SDE will proceed with resolution of allegations that are not part of the due process hearing. The SDE will set aside allegations that are the subject of a due process hearing and will suspend the timeline for those allegations.

When the hearing is resolved, the SDE will proceed with resolution of any allegation on which the hearing officer has not ruled. However, the SDE will proceed to resolve allegations that an education agency failed to implement a due process hearing decision.

- C. If the complaint is withdrawn by the complainant prior to expiration of the timeline for resolution, the SDE will close the complaint.

Section 3. Complaint Resolution Processes

The SDE will make every effort to resolve complaints in the least adversarial manner possible. Resolution of a formal complaint may be achieved through one or more of the following four processes:

1. **Verification of resolution:** At any time during an investigation, the education agency may submit information to the SDE to document that one or more of the allegations in the complaint have been resolved. The SDE may also receive similar information from other sources.
2. **Corrective action plan (CAP):** The district may propose a CAP to address the allegations in the complaint. The SDE may accept, reject, or negotiate the proposed CAP or require other corrective actions or timelines to ensure that the district will achieve compliance for each allegation stated in the complaint. If this process is not successful, the SDE will conduct a full investigation.
3. **Early complaint resolution (ECR):** The SDE may propose the use of ECR to resolve the complaint. This mutual approach provides the complainant and the district an opportunity to immediately resolve the issues prompting the complaint, even though the parties may not agree on particular findings of fact and conclusions. The SDE Dispute Resolution Coordinator or a contracted investigator will facilitate a resolution through the development of a written agreement to be signed by both parties. If this process is not successful, the SDE will conduct a full investigation.
4. **Investigation:** If necessary, the SDE will investigate the complaint by conducting interviews and reviewing files, correspondence, and other information. An on-site investigation may occur if necessary.

Section 4. Compliance Activities

The SDE will negotiate or require corrective actions, including timelines, as necessary, for the education agency to achieve compliance.

- A. **Remedies:** The SDE will identify the specific corrective action necessary for the district to achieve compliance. If it is determined that the district has failed to provide appropriate services, the SDE will address:

1. How to remedy the denial of those services including, as appropriate, the award of compensatory education, monetary reimbursement, or other corrective actions appropriate to the needs of the student that is the subject of the complaint; and
 2. Appropriate future provision of those services for all students with disabilities in the education agency.
- B. **Documentation:** The SDE will verify implementation of corrective actions and compliance by obtaining documentation from the district or education agency, confirming compliance with the complaint, or conducting an on-site follow up.
1. **Technical assistance:** If necessary, the SDE will provide technical assistance to the district or education agency during or following complaint resolution. The SDE will maintain a record of technical assistance provided to districts or education agencies.
 2. **Sanctions:** If the district or education agency fails to achieve compliance, the SDE may initiate procedures to withhold federal funds until compliance is achieved.

Section 5. Complaint Resolution Steps

Within 60 days of receiving the complaint, the SDE will complete the following:

- A. The SDE will decide to accept or reject the complaint based on the allegations and supporting facts.
- B. Notify both parties in writing of the SDE determination, including a copy of the complaint and “Procedures for Resolving Complaints”.
- C. Offer mediation to both parties as a method for resolving the complainant’s concerns.
- D. The complainant will be notified of his or her right to submit additional information, either orally or in writing. Complainants will be asked to submit additional written information within 15 days of receiving notice of the right to do so. The complainant may submit additional oral information through an interview with the complaint investigator.
- E. Gather sufficient additional information to make a determination for each allegation through informal fact finding; telephone or personal interviews; and a review of files, documents, correspondence, and other information. If both parties agree that one or more violations have occurred, additional fact-finding will not be conducted in those areas.
- F. Carry out an independent on-site investigation if it is determined necessary.

- G. Review all relevant information and make an independent determination for each allegation filed by the complainant as to whether the education agency has violated a requirement of Part B of the IDEA 2004.
- H. Issue a Final Report to the complainant and district or education agency that contains:
 - 1. An introduction with:
 - a. An assigned case number per the date the complaint was received by the SDE.
 - b. The name of the parties involved.
 - c. The complainant's allegations.
 - d. The complaint investigator's name.
 - e. Identified information gathered and reviewed.
 - f. If relevant, a description of any extension of the 60-day timeline and the exceptional circumstances that warranted the extension.
 - 2. The SDE's findings of fact.
 - 3. The SDE's conclusion regarding each allegation.
 - 4. If the SDE determines the education agency violated a Part B requirement, required Corrective Action(s) will be stated in the report. A timeline and method of documenting compliance will be included.
- I. Personally identifiable information about the student will not be included in the final report. The use of personally identifiable information about personnel employed by the education agency will be avoided.
- J. The 60-day timeline may be extended if exceptional circumstances exist and are documented by the SDE, or the parties agree to voluntarily engage in mediation or other dispute resolution options offered by the SDE. If the timeline is extended, both parties will be notified. The notification will include the length of the extension and a description of the exceptional circumstances that warrant the extension.

Section 6. Record of Complaints

Each complaint file will be maintained for a period of at least 5 years and will include an original or copy of:

1. The complaint.
2. The investigative notes, documents, correspondence, phone logs, etc.
3. The Final Report, or documentation that the complaint was withdrawn.
4. Verification of compliance if additional activities are required in the report.

DUE PROCESS HEARING REQUEST FORM

Please submit any request for a due process hearing to your district superintendent and to the Dispute Resolution Coordinator, State Department of Education, Division of Student Achievement and School Accountability, P.O. Box 83720, Boise, ID 83720-0027. (You may use this form or submit a letter that includes the information below.)

A. General Information: (type or print)

Date of Written Request: _____ Date Received (completed by SDE): _____

Name of Individual Requesting Hearing: _____

Address: _____

City: _____ Zip: _____ Day Phone: _____

Parent/Guardian of Student: _____

Address: _____

City: _____ Zip: _____ Telephone: (Hm) _____ (Wk) _____

Name of District/Agency Hearing Request Is Against: _____

Student Information:

District Information:

Student Name: _____ District Contact: _____

Address: _____ Address: _____

City: _____ Zip: _____ City: _____ Zip: _____

Telephone: _____ Telephone: _____

School Student Attends: _____

(Complete if the information is available):

Student's Attorney: _____

(Complete if the information is available):

District's Attorney: _____

B. Issue(s): Describe your specific problem that relates to any matter of identification, evaluation, educational placement, or provision of a free appropriate public education. Summarize the facts and information as a basis for each allegation. (Attach additional pages if needed.)

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C. Resolution: Please provide your suggestions for solving the problem. (Attach additional pages if needed.)

Signature of Individual Requesting Hearing

Title or Relationship to Student

Date _____

FORM FOR FILING A FORMAL COMPLAINT

Please submit any request for a formal complaint to the Dispute Resolution Coordinator, State Department of Education, Division of Special Populations Services, P.O. Box 83720, Boise, ID 83720-0027. The alleged violations may not be older than one year from the date the complaint is received by the SDE. (You may use this form or submit a letter that includes the information below.)

A. General Information: (type or print)

Date: _____

Name of Individual Filing the Complaint: _____

Address: _____

City: _____ Zip: _____ Day Phone: _____ Home Phone: _____

Relationship to Student: _____

Name of District /Agency Complaint Is Against: _____

Student Information:

Student Name: _____

Address: _____

City: _____ Zip: _____

Telephone: _____

District Information:

District Contact: _____

Address: _____

City: _____ Zip: _____

Telephone: _____

School Student Attends: _____

(If complaint involves more than one student, please complete the student and district information for each student.)

In the case of a homeless child or youth, provide available contact information:

B. Allegation(s): Describe the specific issue(s) that relate to potential violations of Part B of the IDEA 2004. Provide supporting facts and information for each allegation. (Attach additional pages if needed.)

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C. Resolution: Please provide your suggestions for solving the problem. (Attach additional pages if needed.)

[illegible]

Signature of Individual Filing Complaint

Title or Relationship to Student

Date

Document date:

Resolution Session Form

Page of

Student's Name:	District ID:	State ID:	Grade:	Sex:
Native Lang:	Ethnicity:	Birth Date:	Age:	
District:	School:			
Parent/Guardian Name:	Home Phone:			
Address:				
Native Language:	Daytime Phone:			
Parent/Guardian Name:	Home Phone:			
Address:				
Native Language:	Daytime Phone:			
Director:	Daytime Phone:			

The IDEA (2004) requires that options be made available to resolve conflict when a request for a due process hearing is filed. The "resolution session" provides an opportunity for the parent and/or adult student and the district to resolve issues identified in a due process hearing request. A resolution session is a meeting scheduled by the district and involves relevant members of the IEP team and the parent and/or adult student. The attorney for the school district will not attend the meeting unless the parent's/adult student's attorney is present. If requested by both parties, the State Department of Education (SDE) will appoint a neutral facilitator to conduct the resolution session.

A resolution session will be scheduled by the district unless one of the following occurs:

1. Both the parent and/or adult student and the school district mutually agree to participate in mediation from the SDE.
2. Both the parent and/or adult student and the school district mutually agree in writing to waive the resolution session.

Should a resolution session occur, the 45-day hearing process will not start until up to 30 days have expired, allowing for resolution.

Should the parties mutually waive the resolution session and mutually agree not to participate in SDE mediation, the due process hearing will be scheduled, and the 45-day timeline for completing the hearing will start on the date that the request for a hearing was received.

Please sign below regarding your participation in a resolution session. Unless both the district and the parent and/or adult student waive the resolution session, a meeting will be scheduled. If the district schedules a resolution session and the parent and/or adult student does not attend, the issues cannot be taken to a due process hearing.

Signature	Waive Resolution Meeting	Date
Parent:	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Parent:	<input type="checkbox"/> Yes <input type="checkbox"/> No	
District Representative:	<input type="checkbox"/> Yes <input type="checkbox"/> No	

